

**MINUTES**  
**CLAY COUNTY PLANNING COMMISSION**  
**7:00 P.M., TUESDAY, AUGUST 15, 2017**  
**MEETING ROOM B - THIRD FLOOR COURTHOUSE**

**Members Present:** Amos Baer, Mark Klevgaard, Tom Jensen, Jenny Mongeau, Joel Paulsen, Curt Stubstad, Bill Davis, Andrea Koczur.

**Members Absent:** Tim Brendemuhl, Dan Langseth, Randy Schellack.

**Others Present:** Tim Magnusson, Lynne Spaeth, Jenny Samarzja, Ian Bullis, Raymond Reading, Mark Ciernia, Paul Wibe, Ben Woodside, Brent Strand, Tim Thompson, Dan Jongeword, Scott Withus, Alvin Hanson.

**APPROVAL OF AGENDA**

**On motion by Jenny Mongeau, seconded by Curt Stubstad, and unanimously carried, the Planning Commission approved the Agenda.**

**APPROVAL OF MINUTES**

**On motion by Joel Paulsen, seconded by Tom Jensen, and unanimously carried, the Planning Commission approved the July 18, 2017 Minutes as presented.**

**CITIZENS TO BE HEARD**

- Tim Thompson approached the Commission. He lives near Baker, Minnesota and speaks for himself and nearby neighbors. Thompson has been in contact with Tim Magnusson over some property line and permit issues to come before the Commission. He states although he has photos and a drone video, he was not able to assemble information in time for the meeting. There is a home in Baker that extends across property lines. Some of the surrounding parcel owners have been in contact with the landowner and were told he knew where the property lines were located. Approximately four people have had surveys prepared of their parcels. On about four parcels he went as far as 20 feet over the property lines. He placed a mobile home with a deck and propane tank. There is electrical service and he has planted trees. A pit was dug on Thompson's property and the landowner was over the property lines on at least four locations. Thompson inquired whether any building permits had been issued and was informed that a record search showed that no permits had been issued on the parcel. They would like to have the property viewed by the Planning and Zoning department and be given some recommendations. Alliance Township has no authority for enforcement. Thompson suggested as possible enforcement remedies, the reimbursement for the cost of the surveys, filling up the pit and enforcing the set-back requirements. Additionally, very recently the planted trees were removed by the party that planted them, but there is still the issue with the pit and the deck. A map was also made available to the Commission.

- Dan Jongeward approached the commission. He lives outside of Hawley. He states that within two miles of his residence there are six gravel pits. Jongeward has called numerous times with complaints about one pit that he feels is not abiding by the set conditions, specifically: dust control and grading the road. He has lived on his property for 17 years and he has not ever seen a grader at the site. Jongeward lives on 147 Avenue which eventually becomes a minimum maintenance road. Central Specialties arrives every May and dust guards the road for four miles. They also grade the road. Speed and safety is a concern, especially when walking on the road. He has called the company and landowner many times and has had no response. He added that Tim Magnusson placed one phone call and the company changed their route and got off that road. He questioned who performs the inspections on the permits. He wants to see Clay County do a check and balance system. Amos Baer asked if he had any suggestions. Jongeward answered he would like someone to go out and check on the pits but Magnusson informed him that the County goes by the honor system. In closing, he stated that every condition has been violated.

Tim Magnusson interjected that although Central Specialties responds to him and to the landowners, unfortunately some companies do not.

Jenny Mongeau stated that a permit can be revoked if the conditions were violated, granted they had adequate time and have received warnings.

Jenny Samarzja added that the violation would cite the Development Code and include different enforcement remedies.

### **ALEXANDRIA GRAVEL PRODUCTS LLC - REQUEST FOR INTERIM USE**

The applicant is seeking approval of an Interim Use Permit to allow the expansion of a new gravel mining operation. The operation would be approximately 39 acres in area and located in the South Half NE Quarter, Section 21, T142N, R45W (Hagen Twp.). The parcel is in the Agricultural General (AG) and Resource Protection-Aggregate (RP-Agg) overlay zoning districts.

**On motion by Bill Davis, seconded by Andrea Koczur, and unanimously carried, the Planning Commission opened the public hearing.**

Tim Magnusson, Planning Director, distributed an email he received from Roger Hemphill in the Detroit Lakes DNR office. Hemphill has not had time to talk to their scientist yet and there are some concerns with sensitive areas, calcareous fens and possibility of threatening endangered species in the proposed expansion. The DNR would like to see issue tabled to allow them time for more research.

Magnusson presented a photo of the property location. This site was originally granted a CUP for mining and asphalt hot mix plant in 2010. The permit was limited to 25 acres. He pointed out the surrounding pits in the area and three nearby residences. If the permit is granted, Alexandria Gravel Products is intending to purchase 80 acres from Mr. Greene. He indicated where the existing pit was and where the proposed expansion would be located. They have worked with the

Soil & Water Conservation District regarding the natural coulee that runs through the property. There would need to be a silt fence or erosion control to keep and plant materials out of the coulee. The applicant intends to wash some of the product mined. That would mean they would require a DNR waters appropriations permit for any well used or they would use water that collects in the mined area. The DNR wants to sit down with applicant to discuss the issues on the property.

The haul road would be south on County Road 27 for a mile and a half to County Highway 34. The applicant states they would use chloride and water to provide dust control along the haul route. Magnusson spoke with the Highway Engineer and there were no concerns.

Days and hours of operation proposed are: April thru November, Monday thru Saturday, 6 AM to 8 PM. The termination date would be 2022, and reclamation is required.

The applicant was present for questions. Scott Withus representing Alexandria Gravel Products approached the Commission. He needs to know what he can get from the property before he purchases it. He stated he did not check with the DNR, but he walked the land with Lynn Foss, SWCD, and he did not see any problems and approved the proposal. Withus will talk to the DNR regarding washing the product. The Township met the prior evening and approved the proposal. He provided documents from that meeting outlining their conditions which consist of speed limits and hours of operation.

The decision to approve could be contingent upon the DNR findings or the application could be tabled. DNR has issue with ground water appropriation.

The chair asked if anyone else wanted to speak for or against the proposal.

Mark Ciernia of the Hagen Township Board confirmed the Township's approval of the expanded permit. There is also an asphalt permit and he knows the applicant does not have any intention of making asphalt. Magnusson clarified that if no mining had been done in 12 months, the permit is null and void. Signage and the funding of an enforcement officer were discussed. Additionally, Ciernia said a Resolution regarding enforcement was submitted to the Minnesota Legislature last year but did not pass. He inquired whether the County would be interested in backing and funding enforcement by using a portion of the gravel tax money. Tim informed how gravel tax is distributed among county and townships and into the reclamation fund.

**On motion by Curt Stubstad, seconded by Bill Davis, and unanimously carried, the Planning Commission closed the public hearing.**

A condition regarding the approval of the DNR was discussed and considered.

Magnusson said the conditions listed on the staff report are the conditions from the current permit.

**The Findings of Fact for Interim Use Permits were discussed and the Planning Commission found the following items to be applicable with this proposal:**

- 5. Nuisance Conditions:** Adequate measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise, and vibration, water pollution and soil erosion, so that

none of these will constitute a nuisance, and to control lighted signs or other lights in such manner that no disturbance to neighboring properties will result.

12. **Traffic Hazards, Congestion in Flood Plain Areas:** The use will not cause traffic hazards or congestion and in flood plain areas has access during flooding for ordinary and emergency vehicles.

**The items were discussed and the Planning Commission found that they can be addressed with conditions.**

Township conditions were discussed and will be incorporated with the Planning Commission conditions. Speed limit and enforcement, hours of operation, and DNR rules and regulations were discussed.

**On motion by Curt Stubstad, and seconded by Joel Paulsen, and unanimously carried, the Planning Commission approved Alexandria Gravel Products request for an Interim Use Permit to allow the expansion of a new gravel mining operation. The operation would be approximately 39 acres in area and located in the South Half NE Quarter, Section 21, T142N, R45W (Hagen Twp.), with the following conditions at minimum:**

1. Applicant shall operate within provisions of the Clay County Land Development Ordinance.
2. The Hagen Township conditions are attached and incorporated herein by reference.
3. Operator shall control dust and provide necessary maintenance on any/all gravel haul roads.
4. Operator shall provide proof of NPDES/SDS, Storm Water Management, and Air Quality Permits, as required, to the Planning Office and shall follow all local/state/federal regulations prior to commencing mining operations.
5. Operator shall contact Clay SWCD and have wetland evaluation. Operations must comply with all provisions of WCA.
6. A maximum of 39.5 acres be approved for mining.
7. Require applicant to post a reclamation bond of \$2,000 per acre.
8. Require applicant to reclaim mined out areas as mining activities progress. Require areas to be seeded.
9. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Environmental Services Division.
10. Mining operations: April 1 thru November 30, 6:00 A.M. to 8:00 P.M., Monday thru Saturday. If the operator needs to operate 24/7 or beyond stated days/hours they shall first notify the Planning Office with the reason and the length of time requested so the extended hours can be approved and affected property owners notified.
11. Permits shall expire December 31, 2022.

#### **BISON RIDGE ESTATES LLC. - REQUEST FOR INTERIM USE**

The applicant is seeking approval of an Interim Use Permit to allow the establishment of a very short-term aggregate mining operation. Materials from the site would be used only to improve an adjacent township road. The property affected is the N Half NE Quarter, Section 17 and S Half SE Quarter, Section 8, T139N, R45W (Hawley Twp.) in the Agricultural General (AG) zoning district.

**On motion by Tom Jensen, seconded by Bill Davis, and unanimously carried, the Planning Commission opened the public hearing.**

Tim Magnusson, Planning Director, stated that the applicant appears with the intent of this mine is to provide material for improvement of 12<sup>th</sup> Avenue South to a full maintenance road. Equipment used at the site will include a payloader and bulldozer. The applicant proposes to conduct mining from April thru November, Monday thru Friday, 7:00 A.M. to 6:00 P.M., from 2017 until 2021. In addition, the mine could be used for internal roads in the subdivision. Magnusson presented photos of the area, property lines, setbacks, and the subdivision. Access to the mining site is proposed to be along 200 Street South, then west on 12<sup>th</sup> Avenue South, and south into the pit area. This permit would be for single use, would be short term, and would have no commercial use.

Ray Reading, the applicant, was present for questions. He informed the Commission that most of the mining would be above ground bulk grade and nothing below ground level. The operation would have a minimum effect on the land and would not affect the CRP. Reading would like to keep the permit until 2021 to improve his own property. He wants to use the resource for infrastructure. He needs the permit for the road and inside of his properties. He is willing to help the township with the rest of the road.

The chair asked if anyone else wanted to speak for or against the proposal.

**On motion by Andrea Koczur, seconded by Curt Stubstad, and unanimously carried, the Planning Commission closed the public hearing.**

**The Findings of Fact and Order were addressed by the Planning Commissioners as they pertain to the requested permit. There were no items that needed to be further addressed.**

The length of the permit was discussed. The applicant needs flexibility to develop his own property and build for others.

**On motion by Jenny Mongeau, and seconded by Mark Klevgaard, and unanimously carried, the Planning Commission approved Bison Ridge Estates, LLC's request for an Interim Use Permit to allow the establishment of a short-term aggregate mining operation. Materials from the site would be used only to improve an adjacent township road. The property affected is the N Half NE Quarter, Section 17 and S Half SE Quarter, Section 8, T139N, R45W (Hawley Twp.) The motion was amended to reflect the original termination date requested, and the conditions are as follows:**

- 1. Permit shall terminate on December 31, 2021.**
- 2. Operate within provisions of the Clay County Land Development Ordinance.**
- 3. Operator shall provide dust control, as necessary.**
- 4. Operator shall provide proof of NPDES/SDS, Storm Water Management, and Air Quality Permits, as required, to the Planning Office and shall be following all local/state/federal regulations prior to commencing mining operations.**
- 5. Operations must comply with all provisions of Wetlands Conservation Act.**

6. A maximum of 20 acres is approved for mining operations (excavation, screening, crushing, stockpiling, etc.).
7. May operate April thru November, Monday thru Friday, from 7:00 AM to 6:00 PM.
8. Require applicant to provide \$500 per acre reclamation bond and reclaim mined out areas as mining activities progress. Require areas to be seeded upon reclamation.
9. Applicant shall provide parking, screening, lighting, drainage, and portable sewer facilities consistent with County regulations as determined by the Planning Department and County Health Department.

#### **BRB LLC – PETITION FOR REZONING**

The applicant is seeking approval of a petition to rezone a 7.66-acre parcel which is currently zoned Agricultural General (AG) with an Urban Expansion District Tier 1 (UED-1) overlay zone. The request is to either remove the UED-1 zoning from the parcel or change the UED designation to Urban Expansion District Tier 2 (UED-2). Said parcel fronts on 46<sup>th</sup> Ave. S. and abuts the City of Moorhead. It is in the NW Quarter SE Quarter, Section 29, T139N, R48W (Moorhead Twp.).

**On motion by Andrea Koczur, seconded by Tom Jensen, and unanimously carried, the Planning Commission opened the public hearing.**

Tim Magnusson, Planning Director, conveyed to the Commission, this application had been heard before prior to the 2-Tier designations. He stated that the property has been used as cultivated agricultural land and there are currently two small grain bins and a Quonset located on the site. This property abuts the City of Moorhead along 46<sup>th</sup> Avenue South. The intent is to remove the UED-1 zoning and leave the parcel with just the AG zone or rezone to UED-2. This would allow the applicant to apply for a Conditional Use Permit to construct a 101-unit commercial storage facility on the site. The proposed storage use would take up about 1/3 of the entire property. Magnusson displayed a photograph of 46<sup>th</sup> Avenue and of the MNDOT property. There is development to the northeast of the property and a great deal of development straight to the north across 46<sup>th</sup> Avenue. The property falls in the City of Moorhead growth area plans and the City has it zoned as “low density residential”. Magnusson presented a photograph of the growth area plan. The Clay County Comprehensive Plan says that the County should work closely and cooperatively with communities, especially in their Future Growth Areas. The official documents from the last hearing, indicate the City of Moorhead was not in favor of this proposed rezoning. Magnusson was unaware of their current position. Last year the County and the City reviewed the allowed uses and came to a consensus as to how big the UED should be and what should be allowed, and came up with the 2-Tiers. That was presented to and approved by the County Board in February of 2017.

Magnusson added that the Commission had approved a storage facility last month that was located on the edge, but fell under Tier-2. Therefore, allowing for a storage facility. He feels if the Commission recommends the request to the County Board, the cleanest way would be to remove the zoning overlay.

Joel Paulsen informed the Commission that the Moorhead City Council had met the prior evening. As a result of that meeting, there was a resolution to have Joel coordinate with the city and County Planning Commission to come up with a discussion and develop a process for situations where we

have a developer with a potential project that is not listed as a use. He added there was discussion that there are different council members now and they have different policy perspectives. A majority voted that the City needs to take a second look at how they treat the land adjacent to their border and how to administer that in conjunction with the County.

Jenny Mongeau stated that a meeting had been held on Monday, August 14, 2017, with the applicants, 2 Moorhead City Councilmen, County and City staff. All parties are aware that the applicants have been in a state of limbo for the past two years. The meeting consisted of the 2-Tier discussion. Mongeau had supported this before and her position has not changed. She is concerned that we start negotiations again, it will take another year and that would put developers in limbo again for quite some time.

Paulsen voiced his concern about the limited uses allowed under Tier-1 property. He feels it would be helpful to have a mechanism in that if a potential use fit in with the neighboring uses, and if that property were already annexed into city, that use would then be allowed. If the purpose is not listed in the use table, the developer cannot even propose anything. Paulsen stated he is in favor of this as is City Councilmember Elmer.

Mongeau added that Councilmember Elmer went back on some concerns she had with this application when Mike Hullett was on the Board and those residents thought the development was on the other side of the road. Paulsen said there was public outcry regarding the development and Councilmember Elmer went back and contacted every concerned citizen and did not receive any concerns back. Paulsen has not heard any concerns either.

Magnusson explained that at the April 2015 Planning Commission meeting, the commission approved recommending the request to the County Board but the County Board denied it on the City of Moorhead's stance. The Planning Commission voted 6-3 in favor of recommending to the County Board to remove the zoning. Based on a technicality it was approved but because it had to be a 4/5<sup>th</sup> majority, and the advertising period was incorrect, it went back to the County Board and was defeated 3-2.

Magnusson read from the April 2015 Planning Commission meeting. "On motion by Mike Hullett, seconded by Jenny Mongeau, and carried with two nay votes (Amos Baer and David Heng), the Planning Commission recommended denying the petition from BRB, LLC to rezone a 7.66-acre parcel from that is currently zoned Highway Commercial (HC) with an Urban Expansion District (UED) overlay zone." That motion passed so it was sent to the County Board as a denial. It was accepted by the County Board but then there was a question as to what the overall underlying zoning really was and when it came back, is when the Planning Commission approved it.

Paulsen stressed until the City puts sewer and water in and annexes the property in, no development will occur. The applicant is not requesting those utilities from the City and does not need them.

Jenny Samarzja presented her staff recommendation to deny the application only due to the guidance we have received from the City of Moorhead that said, "This does not fit with our projected growth plan; therefore, we do not support this rezoning." Even by statute the requirements to grant rezoning, and considerations to look at when rezoning are conflict with the comprehensive plans for any township, city or the county or county land use plans.

Paulsen said previously there was a resolution to the County to deny this request. Last night, the City Council was not prepared to do that without doing more research and receiving feedback.

Magnusson said if the Commission recommended the rezoning to the County Board, Notice would have to be published, and if approved by the Board, the applicants could apply for a CUP.

Brent Strand and Ray Kvalvag, the applicants, were present for questions. Ben Woodside was also present with the applicants. Ray Kvalvag recapped the history of the proposal. When they originally bought the property, the real estate agent from Park Company had it zoned as “Commercial.” After a period of time, they found out there was a mistake and the map was wrong that it was actually zoned “Agriculture General.” From there, they began the process of rezoning and coming to the Planning Commission in April, of 2015. They were denied. The County Board did approve it with 4-5ths vote. Kvalvag added there was another mistake and it wasn’t published, so they went back and revote and it was denied by the County Board. They waited a year to 2016. Thereafter, the UED 2-tiers came into place.

Strand stated that he tried to have the property annexed in 2015 and was not feasible. He said that currently they are working on the plan to be annexed. Kvalvag added that they attended the City Council meeting and provided information to them. The City is taking a second look at it. He presented a drawing of the project and emphasized that the property is un-kept and the facility would improve the appearance. They will not need the Highway 75 access, as they would use 46<sup>th</sup> Avenue. M He feels that no one will build residential in this area when it is all commercial. They are willing to pay assessments, lights, curbing, etc., even if they are not annexed in. He implored we look at the fairness and urged the Commission to think about the quarter million dollars put into this piece of land that they cannot do anything with. It is dead property.

The chair asked if anyone else wanted to speak for or against the proposal.

Ian Bullis approached on behalf of Eagle Ridge Development. He voiced he is against the proposal. Eagle Ridge owns property to the north. Their project will be completed next month. They have added 300 residences to the City and they need to be able to rent it. Storage units are not conducive with their project. They opposed this project last year as well.

Paulsen asked Bullis if they would be open to communicating with the applicants regarding esthetics, landscaping, etc. Bullis stated his willingness and the applicants also agreed to communicate with Eagle Ridge.

**On motion by Joel Paulsen, seconded by Tom Jensen, and unanimously carried, the Planning Commission closed the public hearing.**

Criteria and General Review Standards for Granting Zoning District Amendments were reviewed and discussed.

**On motion by Joel Paulsen, seconded by Curt Stubstad, and unanimously carried, the Planning Commission made a recommendation to rezone property owned by BRB, LLC, by removing the Tier 1-Urban Expansion Overlay, on the Agricultural General zone. The**



rezoning is for a 7.66-acre parcel of property located in the NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, Section 29, T139N, R48W, Moorhead Township. Said recommendation will be forwarded to County Board for final action.

**Adjourn:**

On motion by Tom Jensen, and seconded by Jenny Mongeau, the meeting adjourned at 8:20 p.m.

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Thomas Jensen, Planning Commission Secretary